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# COLLECTIVE BARGAINING AS A DISPUTE-REDUCTION VEHICLE ACCOMMODATING CONTRARY ANIMAL WELFARE AGENDAS

MICHAEL N. WIDENER\*

## I. INTRODUCTION<sup>1</sup>

The militancy of animal liberators and the equally passionate, if not more politically directed, posture of animal managers evokes Rodney Glen King's famous lament, "can we all get along? . . . Please, we can get along here."<sup>2</sup> Sometimes the response to such a lament is an admission that progress cannot happen when stridently-expressed, unwavering convictions drown out the call of reason. Persons with unshakable convictions simply decide that their beliefs shall win out over others, and that warfare of diminishing degrees of civility is a respectable course of conduct toward the opposing camp. The mentality is: You who are not my brothers in my cause *per se* are my enemies; therefore, your view—and perhaps you—must be eradicated. The rule of law serves to impose civility, absent another means to achieve the "tolerable accommodation of conflicting interests of society."<sup>3</sup> Since crowds and hired peacekeepers cannot restore order every time demonstrations, counter-demonstrations, or even more chaotic civil unrest activities occur, a nation of laws criminalizing certain behavior remains the fallback solution.

In the animal welfare conflict, the American government has reacted to mounting acts of violence through the federal Animal Enterprise Terrorism Act of 2006 (hereinafter, "AETA")<sup>4</sup> and California's Animal Enterprise Protection Act (2008).<sup>5</sup> Each of these statutes criminalizes both bodily harm done by a person to an identified employee of an "animal enterprise" and the intent to cause an employee to fear for his own safety

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<sup>1</sup> This Article uses terms adopted for the sake of uniformity, not political correctness. Definitions for the following terms can be found in the Appendix to this Article: animal rights, animal liberators or animal liberationists, animal managers, animal management, animal treatment, animal welfare, and collective bargaining.

<sup>2</sup> RALPH KEYES, *THE QUOTE VERIFIER: WHO SAID, WHAT, WHERE, AND WHEN* 22 (1984).

<sup>3</sup> Phillip Hamburger, *The Great Judge*, LIFE, Nov. 4, 1946, 117, at 122–25 (quoting Judge Learned Hand).

<sup>4</sup> Force, Violence and Threats Involving Animal Enterprises Act, 18 U.S.C. § 43 (West, Westlaw through Feb. 1, 2010).

<sup>5</sup> CAL. PENAL CODE §§ 422.4, 601.12 (West, Westlaw through 2009 Reg. Sess.) (*as amended* by The Researcher Protection Act of 2008, Assem. B. 2296, 2007–08 Reg. Sess. (Cal. 2007)).

and that of members of his household.<sup>6</sup> However one feels about the merits of such legislation, the acts seem well-named. Battle tactics of the animal liberation movement portend a long-term “guerrilla war” that emphasizes continual undermining of the confidence and stability of the sworn enemy—animal managers.<sup>7</sup> By any account, the number of violent episodes continues to escalate.<sup>8</sup> If the American labor movement’s history is instructive, the continuing escalation of violence toward animal managers will inevitably lead to extreme counter-measures.

This Article advocates stakeholder participation in implementing collective bargaining processes, accompanied by grievance systems, with significant public credibility and widespread acceptance among animal treatment stakeholders. Maintaining “tolerable accommodation” for all parties involved in the animal welfare conflict requires continual improvement of the quality of animal treatment. Advances require review and revision of animal treatment protocols as a universal conviction, stripped of the following emotional overlays of two opposing camps: (a) that all animal management is inherently wrong, constituting animal cruelty *per se* and (b) that animal treatment lies in the complete discretion of each human (including individual animal managers), to which all lower orders of animals are chattels. The latter notion is said to be in keeping with the Genesis texts supporting human “dominion over the fish . . . [,] fowl . . . [,] and over every living thing” of the earth or the notion of “Darwinian dominion.”<sup>9</sup>

While the two camps’ stated ambitions may be fundamentally incompatible, achieving optimal animal welfare is a laudable goal, albeit one not susceptible to rapid resolution. For each type of animal management that imperfectly addresses the polarized views of animal welfare, this Article proposes establishing an “initial stage” protocol, massaged by negotiation among the accommodating, thoughtful centers of each camp. In effect, the Article advocates collective bargaining to implement an “animal labor accord” for clusters of animals under

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<sup>6</sup> 18 U.S.C. § 43(a)(2)(B) (West, Westlaw through Feb. 1, 2010); CAL. PENAL CODE § 422.4 (West, Westlaw through 2009 Reg. Sess.).

<sup>7</sup> See, e.g., Ann Hansen, *Armed Struggle, Guerilla Warfare and the Social Movement Influences on “Direct Action,”* in IGNITING A REVOLUTION: VOICES IN DEFENSE OF THE EARTH 340 (Steven Best & Anthony J. Nocella eds., 2006).

<sup>8</sup> Press Release, Animal Agriculture Alliance, Extremist Attacks on Global Food Chain Increase 42% in 2008, (February 25, 2009), [http://animalagalliance.org/current/home.cfm?Section=2009\\_0225\\_Extremist&Category=Press\\_Releases](http://animalagalliance.org/current/home.cfm?Section=2009_0225_Extremist&Category=Press_Releases); See also The Foundation for Biomedical Research, Illegal Incidents Map, <http://www.fbresearch.org/Media/MediaRoom/Background/IllegalIncidentsMap/tabid/960/Default.aspx> (last visited March 17, 2010).

<sup>9</sup> Compare Genesis 1:26–28, 9:2–3 (King James), with LEWIS PETRINOVICH, DARWINIAN DOMINION: ANIMAL WELFARE AND HUMAN INTERESTS 56 (1999) (positing an evolutionarily-mandated social contract).

management. Impartial “umpires” would record, for ratification by the bargaining parties, negotiated elements that would control future animal management for those species included in the negotiated pact. The Author further proposes periodic renegotiation of the conditions of the animal labor accords, based in part upon periodically upgraded “best management practices” by animal enterprises.

Enhanced ethical attitudes concerning animal treatment are not only desirable to raise the moral authority of humankind, but they are an economic imperative, as well. Devastation of infrastructure, such as that occurring with the destruction of the Alfred P. Murrah Federal Building in Oklahoma City in 1995 or during the South Central Los Angeles riots of 1992, results in magnitudes of human life and property loss.<sup>10</sup> This magnitude of loss is unacceptable to any civilized person empathetic toward sentient creatures or any person conscious of the long-term, socio-economic costs of domestic terrorism and counter-terrorism.

## II. ANIMAL WELFARE DIALECTIC AND ESCALATING HOSTILITIES MANDATING A NEW DIALOG FORM

The basic complaint animal activists assert is summarized in the label applied to their prevailing philosophy—Speciesism. Speciesism encompasses the idea of human superiority; it defines animals as inferior “others,” thus rationalizing their oppression.<sup>11</sup> Activists assert that humans must acknowledge that this supposed superiority is a social construct to justify exploitive and cruel treatment of nonhumans.<sup>12</sup> One scholar has noted that the animal activist’s philosophical opposition to Speciesism is not grounded on the notion of actual “rights” that animals hold, but on the thought that a difference of species is not an ethically defensible ground for giving less consideration to the interests of a sentient, non-human being, than humans accord to other humans.<sup>13</sup>

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<sup>10</sup> The April 19, 1995 bombing by Timothy McVeigh resulted in the demolition of that federal building, 168 deaths and more than 800 physical injuries; it is the deadliest, non-invasive, terror-driven attack to date in American history. See Famous Trials, Oklahoma City Bombing (1997), <http://www.law.umkc.edu/faculty/projects/FTRIALS/mcveigh/mcveightrial.html> (last visited April 16, 2010). Rodney King’s plea framed the majority American view of the April, 1992 Los Angeles riots stemming from that inner city’s unheeded frustrations about race, unemployment and other economic inequities; these translated into 53 deaths and an estimated 1 Billion Dollars in property damage. The riots began upon the acquittal in Ventura County, California of four police officers who “tasered” and beat Mr. King after apprehending him following a car chase in 1991. See *Los Angeles Riot Still Echoes A Decade Later*, CNN, April 29, 2002, <http://archives.cnn.com/2002/US/04/28/la.riot.anniversary/>.

<sup>11</sup> DIANE L. BEERS, FOR THE PREVENTION OF CRUELTY: THE HISTORY AND LEGACY OF ANIMAL RIGHTS ACTIVISM IN THE UNITED STATES 3–4 (2006).

<sup>12</sup> E.g., Peter Singer, *Animal Liberation at 30*, THE NEW YORK REVIEW OF BOOKS, May 15, 2003, 23, at 23.

<sup>13</sup> *Id.*

Strategies of animal rights conservatives have included lobbying for the passage of laws and prosecution of animal abusers, raising public awareness through information dissemination and protests, and convincing the public to boycott animal-based industries' products.<sup>14</sup> Tactical methods of persuasion, facilitation, bargaining, and coercion are broad rubrics identified with such conservative animal rights activists.<sup>15</sup> Some activists identify the year 1975, when Peter Singer's book *Animal Liberation*<sup>16</sup> first appeared in print, as the pivotal point when more aggressive approaches to promote animal rights began to supplant conservative tactics to obtain industry and government concessions toward more humane treatment of animals.<sup>17</sup> Peter Singer made these, then "revolutionary," observations in the 1980s:

I do not believe that illegal actions are always morally wrong. There are circumstances in which, even in a democracy, it is morally right to disobey the law; and the issue of animal liberation provides good examples of such circumstances. If the democratic process is not functioning properly; if repeated opinion polls confirm that an overwhelming majority opposes many types of experimentation, and yet the Government takes no effective action to stop them; if the public is kept largely unaware of what is happening in factory farms and laboratories - then illegal actions may be the only available avenue for assisting animals and obtaining evidence about what is happening.

My concern is not with breaking the law, as such. It is with the prospect of the confrontation becoming violent, and leading to a climate of polarization in which reasoning becomes impossible and the animals themselves end up being the victims. Polarization between animal liberation activists, on the one hand, and the factory farmers and at least some of the animal experimenters, on the other hand, may be unavoidable. But actions which

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<sup>14</sup> Malcolm A. Kram, *Influence of the Animal Welfare Movement on Teaching and Research*, in EDUCATIONAL PERSPECTIVES IN PREPARATION FOR THE 21<sup>ST</sup> CENTURY 10, 11-12 (Arthur R. Aronson & Jim E. Riviere eds., 1990); see, e.g., Lyle Munro, *Strategies, Action Repertoires and DIY Activism in the Animal Rights Movement*, 4 SOC. MOVEMENT STUDIES 75, 76, 79-81 (2005) (describing a variety of tactical methods).

<sup>15</sup> See Munro, *supra* note 14, at 76, 79-81.

<sup>16</sup> PETER SINGER, *ANIMAL LIBERATION* (2nd ed. 1990).

<sup>17</sup> See BEERS, *supra* note 11, at 3.

involve the general public, or violent actions which lead to people getting hurt, would polarize the community as a whole.

The animal liberation movement must do its part to avoid the vicious spiral of violence. Animal Liberation activists must set themselves irrevocably against the use of violence, even when their opponents use violence against them. By violence I mean any action which causes direct physical harm to any human or animal; and I would go beyond physical harm to acts which cause psychological harm like fear or terror. It is easy to believe that because some experimenters make animals suffer, it is all right to make the experimenters suffer. This attitude is mistaken. We may be convinced that a person who is abusing animals is totally callous and insensitive; but we lower ourselves to their level and put ourselves in the wrong if we harm or threaten to harm that person. The entire animal liberation movement is based on the strength of its ethical concern.<sup>18</sup>

A leading philosopher of one faction of the animal rights movement, Tom Regan, has characterized any attempt to usurp the rights of individual animals, merely to conserve a species or an ecosystem, as “environmental fascism.”<sup>19</sup> This mind-set partially explains why antivivisectionists, and other animal liberators, have fought so vehemently against controlling or eliminating destructive, invasive species, along with virtually every other form of animal management.<sup>20</sup> In Regan’s view, all living creatures that meet “subject of a life” criteria have categorical intrinsic moral value (thus, equal to a human’s); these criteria include possessing beliefs and desires, having perception, memory, a sense of the future, and exhibiting the ability to initiate action to realize goals and desires.<sup>21</sup> Regan’s argument is that no human has the right to exploit such a creature for any purpose, no matter how apparently virtuous the human’s purpose might be.<sup>22</sup> At the center of animal liberationists, Gary Francione claims that all animal use should be abolished and that all wild animals

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<sup>18</sup> PETER SINGER, *THE ANIMAL LIBERATION MOVEMENT: ITS PHILOSOPHY, ITS ACHIEVEMENTS AND ITS FUTURE* (1985), available at <http://www.utilitarian.org/texts/alm.html>.

<sup>19</sup> See TOM REGAN, *THE CASE FOR ANIMAL RIGHTS*, 243, 361–362 (2d ed., 2004).

<sup>20</sup> Michael Hutchins, Letter, *Animal Rights and Conservation*, 22 CONSERVATION BIOLOGY 815, 815 (2008).

<sup>21</sup> See REGAN, *supra* note 19.

<sup>22</sup> *Id.*

should be left to “nature’s way,” while domestic animals (such as horses and household pets) should no longer serve in any human setting.<sup>23</sup>

One author rejecting the fundamental tenets of the animal liberators, Michael Hutchins, asserts:

[W]ildlife managers and conservationists are going to continue to have to control or eliminate populations of invasive species, reduce overpopulation in native species, and cull individual animals that threaten human safety and food and economic security. In short, if wildlife is to survive, we must continue to maintain the tenuous balance that exists between humans and wildlife.<sup>24</sup>

This rhetoric epitomizes the polarity of views; each camp argues that humans are *compelled* to take specific action that diametrically opposes the other camp’s mandate.

Recent events make clear that elements of the animal rights movement spurned Singer’s admonitions against violence and promoted civil disobedience. A summary of activities occurring through February of 2008 causing personal anxiety or property damage by certain animal “liberation fronts” and “militias,” entitled “Universal Adversary Dynamic Threat Assessment,” was issued by the U.S. Department of Homeland Security National Preparedness Directorate.<sup>25</sup> Since February 2008, the activities have increased in intensity, and arrests and prosecutions pursuant to the AETA are proceeding in 2009.<sup>26</sup> The actions taken by militant activists include attempted home invasions in February 2008, a firebombing

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<sup>23</sup>GARY L. FRANCIONE, ANIMALS AS PERSONS: ESSAYS ON THE ABOLITION OF ANIMAL EXPLOITATION 13, 17 (2008) (contending that mere sentience is sufficient to confer rights upon animals, whether or not they have any cognitive ability); GARY L. FRANCIONE, *Reflections on Animals, Property, and the Law and Rain Without Thunder*, in ANIMALS AS PERSONS: ESSAYS ON THE ABOLITION OF ANIMAL EXPLOITATION 67, 107 (2008); GARY L. FRANCIONE, *Taking Sentience Seriously*, in ANIMALS AS PERSONS: ESSAYS ON THE ABOLITION OF ANIMAL EXPLOITATION 129, 141–42 (2008).

<sup>24</sup>Michael Hutchins, *The Limits of Compassion*, THE WILDLIFE PROF., June 2007, at 43–44. This view echoes the conclusion contained in the Policy Statement on Sustainable Use of Wild Living Resources: “Both consumptive and non-consumptive uses of biological diversity are fundamental to the economies, cultures and well-being of all nations and peoples.” INT’L UNION FOR THE CONSERVATION OF NATURE, *POLICY STATEMENT ON SUSTAINABLE USE OF WILD LIVING RESOURCES, ANNEX TO RESOLUTION 2.29*, ¶ 2 (2000), [cmsdata.iunc.org/downloads/wcc\\_2000\\_en.pdf](http://cmsdata.iunc.org/downloads/wcc_2000_en.pdf).

<sup>25</sup>See NATIONAL PREPAREDNESS DIRECTORATE, DEPARTMENT OF HOMELAND SECURITY, ECOTERRORISM: ENVIRONMENTAL AND ANIMAL-RIGHTS MILITANTS IN THE UNITED STATES (2008), available at <http://www.scribd.com/doc/13257274/Ecoterrorism-Environmental-and-AnimalRights-Militants-in-the-United-States>.

<sup>26</sup>See Press Release, Federal Bureau of Investigation, Four Extremists Arrested for Threats and Violence Against UC Researchers (Feb. 20, 2009), <http://sanfrancisco.fbi.gov/pressrel/pressrel09/sf022009.htm>. See also Will Potter, *FBI Arrests 4 Activists as “Terrorists” for Chalking Slogans, Leafleting and Protesting*, GREENISTHENEWRED.COM, Feb. 22, 2009, <http://www.greenisthenewred.com/blog/2009/02/22/aeta-arrests>.

of research professors at the University of California at Santa Cruz in July 2008, the burning of motor vehicles outside a purported researcher's home in November 2008, and the frequent public distribution of printed material containing names and addresses of researchers using laboratory animals.<sup>27</sup> A chronology of such "illegal incidents" occurring since 1997 is maintained by the Foundation for Biomedical Research and organized by state.<sup>28</sup>

In 2007, a spokesman for an activist group foretold escalating, violent tactics calculated to draw attention to the "cause" of animal liberation.

"Nothing else works, and these people are torturing animals to death, and they should be stopped," said Dr. Jerry Vlasak, a press officer with the North American Animal Liberation Press Office. "If they won't stop after using every other [peaceful means], they should be stopped using any means necessary." In what would represent a major departure from the liberation movement's traditional ban on violence against individuals, Vlasak said Americans can expect to see more violence done against "animal abusers," including university scientists who participate in animal testing.<sup>29</sup>

It is difficult to accept the animal liberators' logic that injuring an individual human is a means that justifies saving a single animal from harm.<sup>30</sup> However, it has become less difficult to understand the intolerance and mounting frustration of animal rights activists living in a 21st century American society that continues to condone excesses, like helicopter

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<sup>27</sup> Press Release, Federal Bureau of Investigation, Four Extremists Arrested for Threats and Violence Against UC Researchers (Feb. 20, 2009), <http://sanfrancisco.fbi.gov/pressrel/pressrel09/sf022009.htm>.

<sup>28</sup> See The Foundation for Biomedical Research, *supra* note 8. Munro asserts that the mainstream animal rights activists are "overwhelmingly non-violent," yet the question remains whether the mainstream will be overwhelmed by their impatient animal liberator cousins. Munro postulates that the media desire for "dramatic footage and headlines which violence and threats of violence provide" comes at a moral price to the animal rights movement. Munro also characterizes as false the perception in certain media that violence in tactics of animal rightists is increasing; but his data are based on activities through 2004. Munro, *supra* note 14, at 78–80.

<sup>29</sup> Jeff Golimowski, *Animal Rights Activists Have No Choice but Violence, Spokesman Says*, CNSNEWS.COM, July 19, 2007, <http://www.cnsnews.com/public/Content/Article.aspx?rsrid=7514> (July 19, 2007) (alteration in original).

<sup>30</sup> As a mathematical proposition, if A, B, C, and D describe the set of all sentient members of the animal kingdom, and each sentient individual has an equal right to exist [ $A=B=C=D$ ], then it matters not which lives and which perishes when survival is at risk. Suppose animal liberation advances such that animal farming is abolished, all farm animals are released into the wild, and, thereafter, a now feral animal is trapped or shot by a starving person whose plant crops were depleted by grazing animals. Which individual animal's lot has improved in this scenario?



wildlife-hunting,<sup>31</sup> slaughter of retired racehorses<sup>32</sup> and racing dogs,<sup>33</sup> extermination of wild horses and burros,<sup>34</sup> dog-breeding “mills,”<sup>35</sup> cockfighting,<sup>36</sup> dog fighting,<sup>37</sup> and even hog-dog “fighting.”<sup>38</sup> But for every dialectic in which both sides are convinced that the end justifies the means, chaos has become the next step, and thus any civil communication between the two sides is inevitably lost. Americans must elect either the “might makes right” approach to animal treatment or a calming, reasoned method of animal welfare negotiation that acknowledges aspects of each camp’s ideology.

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<sup>31</sup>Same-day “land and shoot” hunting of certain bears is approved by Alaska in certain state regions. E.g., Samantha Henig, *Aerial Wolf Gunning 101*, SLATE, Sept. 2, 2008, <http://www.slate.com/id/21991401>. A “Wolf and Bear Protection Act” initiative appeared on Alaska’s August 26, 2008 ballot and was defeated by ten percentage points. DIVISION OF ELECTIONS, STATE OF ALASKA—PRIMARY ELECTION (AUG. 26, 2008): OFFICIAL RESULTS (2008), [http://www.elections.alaska.gov/08\\_prim/data/results.pdf](http://www.elections.alaska.gov/08_prim/data/results.pdf). This “sport” is now illegal on federal lands. 18 U.S.C. § 47 (West, Westlaw current through Mar. 17, 2010); 50 C.F.R. § 19.11 (West, Westlaw through Mar. 25, 2010).

<sup>32</sup> See Dorinda Troutman, *Unwanted Horses- Are Wild Horses, Retired Racehorses and “Premarin Mares” to Blame?*, ROCKY MOUNTAIN RIDER, May 2008, [http://www.rockymountainrider.com/articles/2008/0508\\_unwanted\\_horses\\_wild\\_horses.htm](http://www.rockymountainrider.com/articles/2008/0508_unwanted_horses_wild_horses.htm).

<sup>33</sup> See KEVIN STAFFORD, *THE WELFARE OF DOGS* 146, 150 (2006).

<sup>34</sup> See H.R. Res. 503, 111th Cong. (2009) (the Conyers-Burton Prevention of Equine Cruelty Act was introduced in the U.S. House of Representatives Judiciary Committee on January 14, 2009 to prohibit sending horses to slaughter); see also JAMES J. AHERN ET AL., *THE UNINTENDED CONSEQUENCES OF A BAN ON THE HUMANE SLAUGHTER (PROCESSING) OF HORSES IN THE UNITED STATES* (2006), available at <http://www.animalwelfarecouncil.com/html/pdf/consequences.pdf>.

<sup>35</sup> See STAFFORD, *supra* note 32, at 79.

<sup>36</sup> Statutes in many jurisdictions classify attending and promoting cockfighting events as misdemeanors. *Animal Fighting Prohibition Enforcement Act of 2007: Hearing on H.R. 137 Before the H. Subcomm. On Crime, Terrorism, and Homeland Security*, 100th Cong. 4–5 (2007) (testimony of Wayne Pacelle, President & CEO, The Humane Society); see also Brief for The Humane Society as Amici Curiae Supporting Defendants 6–7, *White v. United States*, No. 2:08-cv-118 (S.D. Ohio Dec. 16, 2008), available at <http://blog.cleveland.com/metro/2008/12/WhiteHSUS.pdf> (describing contemporary issues in the “sport” of cockfighting).

<sup>37</sup> Organized dog fighting is banned by the Animal Fighting Prohibition Act, and felony penalties apply in every state for dog fight organizers. 18 U.S.C. § 49 (West, Westlaw through Mar. 17, 2010); one urban area sport today is ad hoc, street dog fighting. See, e.g., American Society for the Prevention of Cruelty to Animals, *History of Dog Fighting*, <http://www.asPCA.org/fight-animal-cruelty/dog-fighting/history-of-dog-fighting.html> (last visited Mar. 29, 2010); Steve Malanga, *The Sick Hipness of Dog Fighting*, CHICAGO SUN TIMES, June 17, 2007, <http://www.manhattan-institute.org/html/miarticle.htm?id=3153>.

<sup>38</sup>In Clarke County, Alabama, dogs “fighting” hogs events feature seating and musical accompaniment. NBC 15, *Responding to NBC 15 Investigation, hog/dog rodeo supporters organize to defend them*, WWW.LOCAL15TV.COM, Mar. 03, 2004, [http://www.local15tv.com/news/local/story/Responding-to-NBC-15-Investigation-hog-dog-rodeo/OY6UeWF79US7IM0\\_mhegFg.csp](http://www.local15tv.com/news/local/story/Responding-to-NBC-15-Investigation-hog-dog-rodeo/OY6UeWF79US7IM0_mhegFg.csp). In addition to these “rodeos,” occurring in pens, are “hog-bay trials” and “hog-catch” events which simulate actual hunts in the wild. Todd Spivak, *Hog Wild*, HOUSTON PRESS, August 24, 2006, <http://www.houstonpress.com/content/printVersion/234614>.

### III. ANIMAL LABOR AND HUMAN LABOR MOVEMENT ANALOGIES

Before abortion rights proponents and opponents launched their hundred-year war, the most overtly, bitterly-fought issue on America's twentieth century domestic front was the treatment of human labor. Unions thrived by advocating for the rights of persons whose voices were otherwise ignored. Immigrant farm laborers, whose English-language handicaps limited their ability to express hurts and needs, became targets for victimization prior to union representation.<sup>39</sup>

Similarly, animals contribute their labor to zoos, marine parks, aquariums, circuses, rodeos, farms, hunting preserves, and indoor environments such as private laboratories, governmental experimental stations, and veterinary colleges. Their housing, food, exercise, conditions of confinement, and work expectations remind one of labor camps before unionization of farm laborers, paralleling the utter dependency of animals upon their managers. Non-human animals have no independent voices;<sup>40</sup> there is little way to know the true extent of an animal's discomfort or distress given their conditions of treatment, unless one is an animal behaviorist observing select members of a limited variety of species during a protracted period. Only non-verbal physical manifestations (and verbal communications unintelligible to humans) evidence animal reactions to abuse or neglect, and these expressions can be concealed from the public by sedation, "hiding away" animals, or mistreating them in private.<sup>41</sup>

Like farm labor camps, animal management environments provide a place where animals may have a chance for a longer life (disregarding the quality of life) than they might in their pre-containment settings. A reasonable person may convincingly argue that an animal's treatment in appropriately controlled conditions is preferable to eradication of the contained species, especially when animal managers, in good faith, attempt to preserve that species in the best-affordable conditions. The permanent loss of a species to its native habitat is not preferable, if that species is a vital link in the animal food chain (including humans) or is a consequential part of some other ecological imperative where the disappearance of a

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<sup>39</sup> MARALYN EDID, *FARM LABOR ORGANIZING: TRENDS & PROSPECTS* 11, 69 (1994); see ERNESTO GALARZA, *MERCHANTS OF LABOR: THE MEXICAN BRACERO STORY* 196 (1964) (able neither to speak nor read English, the bracero knew nothing of his exposure to hazards in the workplace).

<sup>40</sup> David Glasgow, *The Law of the Jungle: Advocating for Animals in Australia*, 13 DEAKIN L. REV. 181, 201 (2008).

<sup>41</sup> See ARNOLD ARLUKE, *JUST A DOG: UNDERSTANDING ANIMAL CRUELTY AND OURSELVES* 88, 106 (2006) (hoarders, being persons collecting large numbers of animals only to ignore their needs, well illustrate neglectful animal managers, and they typically conceal their hoards); *ASPCA v. Feld Entm't, Inc.*, No. 03-2006 (EGS), 2009 WL 5159752 (D.D.C. 2009).

species implicates the survival of other species.<sup>42</sup>

Yet animal liberationists, who categorically oppose killing any sentient animal have, for example, halted eradication attempts of gray squirrels in northern Italy and of mute swans in Vermont.<sup>43</sup> As a result, native red squirrels may disappear from Europe, while the Vermont swans' unchecked reproduction threatens an ecosystem-wide impact.<sup>44</sup> Those animal liberators, arguing that short-term abandonment of all consumption of animals and their by-products is a sustainable solution<sup>45</sup> ignore scientific evidence of inevitable outcomes, such as predatory eradication or the starvation of species resulting from overgrazing and ecological imbalances caused by unchecked animal reproduction.<sup>46</sup> A conversation must begin among informed, thoughtful persons, in an environment of civility where science and values alike are accorded basic respect.<sup>47</sup> Logic cries out for arriving at an optimal forum to seek accommodation of the legitimate interests of each camp.

#### IV. WHY COLLECTIVE BARGAINING IS SUPERIOR TO TRADITIONAL METHODS TO ADDRESS THE ANIMAL WELFARE DEBATE

Collective bargaining recognizes and manages hostile camps. A collective bargaining negotiation between American unions and their management counterparts occurs, as do labor arbitration hearings, in an environment where the parties understand that they will begin and conclude the process as sworn adversaries.<sup>48</sup> Concessions from the opposing side are at times extracted with considerable complaint from the "yielding" party.

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<sup>42</sup> See Dan Perry & Gad Perry, *Improving Interactions Between Animal Rights Groups and Conservation Biologists*, 22 CONSERVATION BIOLOGY 27, 28–29 (2008).

<sup>43</sup> *Id.* at 30.

<sup>44</sup> *Id.* at 31.

<sup>45</sup> However, not all animal rights philosophers argue as such. See GARY L. FRANCIONE, *Reflections on Animals, Property, and the Law and Rain Without Thunder*, in ANIMALS AS PERSONS: ESSAYS ON THE ABOLITION OF ANIMAL EXPLOITATION 67, 114 (2008).

<sup>46</sup> Perry & Perry, *supra* note 42, at 29, 32; see also Kim Y. Masibay, *Mustangs in Danger? Too Many Horses, Too Little Land*, SCIENCE WORLD, April 8, 2002, 18, at 19. (illustrating the advancing-scarcity dilemma, in 260 million public land acres in America's west, wild horses and burros have essentially no predators; thus, their herd sizes can double every three to four years).

<sup>47</sup> A success story of collectively-bargained protocols involving competing industries implicating animal resources (petroleum production and fishing) is described in Gerald W. Cormick & Alana Knaster, *Mediation and Scientific Issues*, ENVIRONMENT, Dec. 1986, 6. A Joint Committee comprised of representative of the stakeholders discussed values issues using standard labor-management negotiations. *Id.* at 10. A subcommittee was appointed to consider an alleged scientific problem (dispersal of fish from seismic acoustic signals) and determine if a research study and scientist consultants were needed. *Id.* at 11–12.

<sup>48</sup> See Howard Huck, *Collective Bargaining in Voluntary Agencies*, 50 SOC. CASEWORK 210, 210–211 (1969) ("A collective bargaining relationship is by definition a conflict relationship . . . . Furthermore, the adversary relationship is not restricted to the bargaining table at a given season of the year . . . . [I]t is never completely absent.").

Given this global view, conventional mediation between these sides often is pointless. The traditional “shuttle-diplomat” mediator who communicates proposed concessions “back-and-forth” between the disputants, cannot substitute for face-to-face dialog by the stakeholder groups in the current animal treatment standoff.<sup>49</sup> All parties believe that a deeper understanding of each other’s viewpoints, interpreted and expressed by an intermediary, has minimal influence as compared to a process of “trading” concessions over a protracted period of time. Further, a mediator cannot impose a resolution unless the stakeholders so instruct, rendering the mediator an arbitrator in fact.

Bargaining provides a substitute for warring factions who intend to harm to each other’s representatives and bystanders. It succeeds whenever civilized persons spurn the idea that “collateral damage” is a humane or rational means to draw attention to the grievances of the miscreant. Further, bargaining is wide-sweeping within the applicable environment. The animal labor agreements proposed here would write the terms of each agreement into every affected creature’s circumstances. Laborers within the agreement’s ambit will all be treated more or less equally when a negotiated accord is properly observed and monitored for compliance.

#### *A. Adjudication Shortcomings*

Adjudication (arbitration and litigation) is essentially unavailing in the context of animal labor conditions. First, barriers to entry exist under this process. Unlike collective bargaining, where any participating stakeholder may “engage” since there are no issues of “standing,” litigation requires a faction to demonstrate its entitlement to redress its grievances. A stakeholder must also wait for a specific case or controversy to arise in order to adjudicate. This is not the case in a bargaining process, where the parties determine an agenda in advance.

A further problem with adjudication in the animal rights context is the lack of judicial discernment; the scientific and ethical conundrums implicit in animal welfare debates are beyond the ken of many adjudicators untrained in such matters, despite their temperament and interest in

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<sup>49</sup> It arguably is unfair to vivisection the mediation process with a broadsword. Indeed, a more useful myriad of hybrid processes are being employed in current dispute resolution environments. See Carrie Menkel-Meadow, Lecture, *Peace and Justice: Notes on the Evolution and Purposes of Legal Processes*, 94 GEO. L.J. 553, 569–76 (2006) (describing the use of “process facilitators” who aid in adopting ground rules for engagement by the stakeholders and decision rules). These tactics can be highly useful at the outset of the sort of collective bargaining process the author advocates implementing. See *id.* at 572–73.

reaching a result.<sup>50</sup> In the limited-issue adjudication, no ruling or determination can address with finality each new policy approach that one side tunnels beneath the opposing camp in a badger-like manner. Judicial resources are particularly strained in most jurisdictions, and cases move through the process slowly.<sup>51</sup>

Adjudication has an additional, fundamental flaw: its remedies rarely prescribe or reward desirable behavior, which could be built into an animal labor accord. Instead, adjudication tends to proscribe or sanction the foe's undesirable conduct. Subsequent judicial opinions can erode the force of a prior decision. Adjudication, at best, affords a glacial means of establishing a "best-available practices" type-agenda. Bargaining sessions do not clog court systems with matters that stymie adjudicators, who have limited authority to make laws and rulings.

### *B. Legislative Foibles*

Compared to bargaining, the legislative process is likewise cost-ineffective.<sup>52</sup> Indeed, that process is viewed as reactive to social progress that already has occurred, instead of advancing progressive agendas.<sup>53</sup> In addition, legislatures must push through bills that correspond to the greatest needs of their jurisdictions. Due to the contentious nature of the animal treatment debate, protracted hearings typically are reserved for those few

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<sup>50</sup> See Lawrence Susskind & Alan Weinstein, *Towards a Theory of Environmental Dispute Resolution*, 9 B.C. ENVTL. AFF. L. REV. 311, 319–20 (1980). Susskind and Weinstein balance thoughtful economic analysis with dispute resolution theory derived from public input land use policy-making processes, thus proposing a system by which to resolve controversies conjoining scientific facts and ethical values. *Id.* These authors are harshly critical of the judicial process' shortcomings in such a context, concluding that "the courts make it practically impossible to reach a judgment that acknowledges the real concerns of all interested parties." *Id.* at 320.

<sup>51</sup> See, e.g., *ASPCA v. Feld Entm't, Inc.*, No. 03-2006 (EGS), 2009 WL 5159752 (D.D.C. 2009). The action commenced when the original complaint was filed in July, 2000. The complaint was dismissed in 2001, but the Fourth Circuit Court of Appeals ordered the action be reinstated for further evidentiary hearings in 2003. The district court hearing, which dealt with the treatment of six Asian elephants, was held in February and March, 2009. On March 18, 2009, the defendants presented their closing arguments before Federal District Judge Emmet G. Sullivan following a six-week trial. *Id.* at \*1–2 (the case was later dismissed for lack of jurisdiction).

<sup>52</sup> As an example of this, in the 2009 Connecticut Legislature, two bills were introduced abolishing the use of bull hooks, electric prods, or other devices having a similar pain-inducing function in elephants. Both were introduced into the same chamber, bearing House Bill Numbers 5814 and 6555. H.B. 5814 & H.B. 6555, 2009 Gen. Assem., Reg. Sess. (Conn. 2009). The session began, therefore, with separate bills having like purposes; sums were expended in drafting, printing and distributing copies of each and, presumably, time was expended in reading their texts and signing on as co-sponsors by assembly-persons and their staffs, prior to the assignment of the bills to committees. H.B. 5814 failed to obtain a hearing; while H.B. 6555 died in committee. See Conn. Gen. Assembly, Bill Tracking, <http://www.cga.ct.gov/> (insert 5814 for number and 2009 for year in the quick search box; then execute the search); Conn. Gen. Assembly, Bill Tracking, <http://www.cga.ct.gov/> (insert 6555 for number and 2009 for year in the quick search box; then execute the search).

<sup>53</sup> E.g., Nan D. Hunter, *Lawyering for Social Justice*, 72 N.Y.U. L. REV. 1009, 1012 (1997).

issues of most pressing demand, such as protection of humans engaged in controversial forms of animal management.

Like adjudicators, legislators are also lacking in subject matter expertise.<sup>54</sup> While they may be under oath, those testifying as experts at assembly committee meetings are seldom subject to sanction if their testimony is uninformative or slanted.<sup>55</sup> Frequently, the nature of lawmaker “examination” of experts is not notably penetrating. Some scholars have observed that scientists and experts are often asked to provide testimony that affords ammunition to one side in a dispute.<sup>56</sup> In such a case, science becomes a means to discredit, embarrass, or impede the opposition’s progress instead of determining the best way to resolve a dispute.<sup>57</sup>

Lobbying for new laws pertaining to animal welfare burdens both animal management trade associations’ and non-profit organizations’ resources alike. Once legislation is passed, those disfavored by the impacts of new laws tend to blame improper influence for the outcome and regard the laws (and their makers) with skepticism, if not contempt.<sup>58</sup> Legislation is subject to court challenge, which can ultimately vitiate a statute, regulation, or ordinance of its intended force and establish exceptions or “loopholes.” However, well-documented and bargained-for standards of animal treatment are verifiable, and violators can be sanctioned by a form of grievance process seen in labor disputes that typically proceeds faster than adjudication methods.<sup>59</sup>

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<sup>54</sup> An illustration of this point is illustrated by a sincere attempt of the City of Wichita, Kansas to regulate certain types of animal treatment. *See infra* note 78. The city’s management deserves respect for its initiative, but the lack of subject matter expertise among its collective drafters appears from the text’s imprecision and attending loopholes.

<sup>55</sup> *See* Cormick & Knaster, *supra* note 47, at 30.

<sup>56</sup> *Id.*

<sup>57</sup> *See id.* at 15.

<sup>58</sup> *See, e.g.,* LARRY CARBONE, WHAT ANIMALS WANT: EXPERTISE AND ADVOCACY IN LABORATORY ANIMAL WELFARE POLICY 176 (2004) (“The American political system is not well equipped to pass laws protecting animal interests. An animal’s legal status is as human property . . .”). *See also* GARY L. FRANCIONE, *Reflections on Animals, Property, and the Law and Rain Without Thunder*, in ANIMALS AS PERSONS: ESSAYS ON THE ABOLITION OF ANIMAL EXPLOITATION 67, 105, 110, 120–21 (2008) (asserting that anti-cruelty statutes are ineffective, as they apply to very few species and explicitly exempt many, are grossly under-enforced, and may lead to increased animal exploitation).

<sup>59</sup> A post-implementation grievance process should be the subject of early-stage bargaining among the stakeholders. Stakeholders in the animal welfare debate should share the expectation that they will confer on a frequent basis and, therefore, expect that non-implementation of accords will make future bargaining difficult due to loss of trust.

*See* Susskind & Weinstein, *supra* note 49, at 335; *accord*, LAWRENCE S. BACOW & MICHAEL WHEELER, ENVIRONMENTAL DISPUTE RESOLUTION 74, 149 (2d ed. 1984).

### *C. Collective Bargaining as a Superior Solution*

Collective bargaining is a superior process to legislation or adjudication for addressing animal welfare issues for numerous reasons. Bargaining session agendas are selected by participants who are, to some degree, self-selecting stakeholders. In the context of the animal welfare debate, persons driven by ideology over purpose will become marginalized during negotiations by purposeful, aligned stakeholders in the ideologue's camp. This dynamic would eliminate certain inefficiencies in the forward progress of negotiations.

A collectively-bargained accord, as that seen in the labor context, is the repository of the negotiation experience; this enhances a shift in the focus from purely immediate matters (which frequently are more symbolic than substantive) to longer-range goals. Successive labor accords illustrate a historical record of improvements in working conditions. They become "owned" by the affected parties over decades, rather than being the property of a few stakeholders who bargained over a briefer term. Negotiators must realize that the most fundamental issues will not be resolved quickly, perhaps not even during one participant generation's lifetime. This is particularly meaningful, however, when a stakeholder is asked to cease or substantially alter its historical livelihood.

The most significant benefit resulting from collective bargaining is the opportunity for the sides to meet on equal ground for purposes of accord negotiations. This level of equality derives from the bargaining process and the requirement that the sides meet and confer in good faith. During the course of typical negotiations, each party has the opportunity to speak openly and to express its opinion regarding its counterpart's behavior. In turn, the counterpart may defend its practices and describe the opportunities and constraints facing those practices. Negotiations are not intended or designed to be one-sided, and appropriately conducted bargaining creates neither winners nor losers.<sup>60</sup> Each party enjoys an equal opportunity to express concerns and explore, when available, a mutually acceptable middle ground. Each side identifies problems and proposes appropriate solutions for implementation at the close of the bargaining session, should modifications be mutually agreed upon. When the process is accorded proper respect, merely having an opportunity to express concerns and evaluate the response of a counterpart enhances the relationship between the parties. Additionally, because participants become mutually committed to a bargaining process they jointly design, both negotiators and stakeholder

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<sup>60</sup> Political Pamphlet, Longmont, Co. Police Dept., Pros & Cons Associated with the Collective Bargaining Process (on file with the KENTUCKY JOURNAL OF EQUINE, AGRICULTURE, & NATURAL RESOURCES LAW).

constituents are more accepting of the results.<sup>61</sup> For example, when essential accords are signed in human labor bargaining, laborers agree not to take industrial action and management agrees to eliminate a workplace atmosphere of intense labor intimidation and coercion.

The transparency of negotiations also identifies parties whose agendas exclude reaching an improved, if less than ideal, labor accord. Because negotiations are discussed among stakeholder managements (and often among the rank and file) after their conclusion, the positions of the parties become better exposed than they would with adjudication, especially when one or more claims are summarily dismissed for reasons unrelated to the substance of a grievance. Public awareness of critical issues is thereby enhanced, as the reasoned positions of the parties are made known through the media. Finally, the bargaining concludes with some sort of peace, however uneasily achieved and maintained.

During bargaining, the exchange of facts and information regarding the cost of proposed solutions to the issues discussed is useful. This provides an interesting contrast to a common litigation mentality—that the less information divulged, the greater the concealing party's advantage. In collective bargaining, each side receives data about the wherewithal of the stakeholder asked to make a concession, along with data about the new or additional economic burdens a change will impose. One may assert that the animal rights faction has no financial or other burden to bear (if one ignores the growing retribution of a society rejecting "liberationist" violence), thus according the faction disproportionate leverage in bargaining. Human nature dictates otherwise. There are two notions of bargaining power rooted in psychology: first, the greater the patience of one bargaining party, the greater its bargaining power; second, the higher the risk aversion of a party, the lesser its negotiating leverage.<sup>62</sup> The first notion appears to favor the animal management camp, which naturally desires to leave animal treatment in stasis. The second "reality" seems to favor the reasonable animal rights stakeholder, since the direct economic burden mainly falls on animal managers required to retool their standards of conduct and operating practices.<sup>63</sup> These two factors are substantially offsetting.

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<sup>61</sup> See, e.g., Cormick & Knaster, *supra* note 47, at 13.

<sup>62</sup> PIERRE CAHUC & ANDRE ZYLERBERG, *LABOR ECONOMICS* 388 (2004).

<sup>63</sup> Compare Susskind & Weinstein, *supra* note 50, at 315 n.16 (environmental groups incur enormous fees in litigation and scientific expert witness fees), with Steven M. Wise, *Animal Rights, One Step at a Time*, in *ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS* 19, 19–20 (Cass R. Sunstein & Martha C. Nussbaum eds., 2004) (modern economies are so dependent on the use of animals that "one cannot live and not support the abuse," for example, by acquiring items made from animal by-products so the indirect costs of improved animal welfare will be borne by all.)



## V. LIMITATIONS OF A COLLECTIVE BARGAINING PROCESS

Collective bargaining has limitations as well. In one sense, bargaining agreements lack the durability of adjudicatory decisions or orders. Previously negotiated standards are recurring targets for revision or elimination by stakeholders that earlier acceded to them. Fighting among stakeholders lacking a unified agenda, but participating on the same bargaining "side," impairs the making and securing of concessions.<sup>64</sup> Leaders of each faction must educate uncooperative participants in their camp about boundaries surrounding the "realm of possibilities."<sup>65</sup> Leaders must also "arm-twist" fellow negotiators into accepting certain unfavorable terms within an otherwise tolerable animal labor accord. Of course, two threshold issues for each "side" include understanding the boundaries of the negotiating agenda and obtaining the buy-in of sufficiently influential stakeholders to make negotiated standards acceptable in the affected categories of animal treatment. Each stakeholder group in a camp, possessing a distinct vantage point, does its own cost-benefit analysis to reach its negotiating position, and each group will value a specific term's impact differently, depending on the impact's distance from "ground zero."<sup>66</sup> Consequently, a bargaining coalition within one camp may unravel over the proposed term of the accord.

Another disadvantage of collective bargaining arises where no common understanding of the method for impasse resolution exists. In certain instances, opposing sides must agree that, in the event of an impasse, there must be a determination of some specific outcome before the bargaining session adjourns. Additionally, the use of a third-party neutral may be troublesome, as they are sometimes received with suspicion or disrespect. One solution to impasse-resolution scenarios is to agree upon a process under which each side will present its "last and best offer," with a third-party neutral obliged to choose one of the offers without compromise (sometimes referred to as "baseball arbitration"). Such a process mandates rationality from each side, except when one camp has tacitly abandoned its objectives with respect to an issue. An outrageous proposal unsupported by sound scientific, economic, or other relevant animal welfare information, will be spurned by the neutral.

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<sup>64</sup> The potential for intra-camp discord increases as new leaders emerge within a camp who did not experience the early stages of bargaining and have difficulty understanding why certain earlier accommodations were made or a particular process is underway in negotiations. See Cormick & Knaster, *supra* note 47, at 15.

<sup>65</sup> Cf. Henry Spira, *Fighting to Win*, in IN DEFENSE OF ANIMALS 194, 197 (1985) ("[W]e must focus sharply on a single, significant injustice, on one clearly limited goal. Moreover, that goal must be achievable.")

<sup>66</sup> See Susskind & Weinstein, *supra* note 50, at 330-31, 336.

Ironically, a threat to success in a bargaining process lurks in the realization that as representatives of opposing camps work together with increasing effectiveness, they lose sight of constituent expectations for vigorous, uncompromising pursuit of opposing objectives.<sup>67</sup> A loss of focus in pursuing defined objectives is particularly hazardous to a bargaining process within any animal rights camp, which contains divergent agendas and lacks a consistent philosophy *inter se*.<sup>68</sup>

## VI. ANIMAL WELFARE COLLECTIVE BARGAINING INDUCEMENTS

A variety of incentives will encourage bargaining engagement by animal stakeholders. Bargaining provides those feeling insufficiently visible with an opportunity to voice positions and shape the formation of animal treatment standards. Cost-conscious stakeholders will find greater resource efficiency in meeting face to face with their opponents without the costly intervention of authority figures and attorneys. Thoughtful stakeholders perceive that a like-minded group, after prioritizing its needs, focuses the negotiation and exposes essential convictions. In turn, this increases the likelihood of reaching some consensus on acceptable concessions and forward progress in advancing particular goals. In a time when the American public's major concerns are employment, national security, preservation of net worth, and energy independence, animal activists may recognize the appeal of compromise strategies to acquire a more favorable public image and to maintain their status of relevance.<sup>69</sup>

Animal enterprises will engage in collective bargaining if pertinent industry standards are developed (or regulations implemented) that permit participants to promote certain products or services under "cruelty-free," "humane treatment," or "animal friendly" rubrics. Just as in the "free range" or "organic" categories of food-raising, the ability of animal managers to price goods and services based upon demonstrated sensitivity toward animal welfare in their manufacture, development, or raising, promotes enhancing animal treatment standards. Even if that sensitivity does not translate directly into pricing advantages, favorable public relations effects of working toward improved animal welfare positively impact both (a) customer interest in goods and services and (b) funding for

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<sup>67</sup> Cormick & Knaster, *supra* note 47, at 15.

<sup>68</sup> See, e.g., Deidre Bourke, *The Use and Misuse of 'Rights Talk' in the Animal Rights Movement*, in *ANIMAL LAW IN AUSTRALASIA: A NEW DIALOGUE* 128, 132–38 (Peter Sankoff & Steven White eds., 2009). "The broad group of animal advocates colloquially referred to as the "animal rights movement" in reality captures a diverse range of perspectives. . . . This conceptual confusion . . . is a source of internal tension within the broad animal rights movement." *Id.* at 132.

<sup>69</sup> See Susskind & Weinstein, *supra* note 50, at 316.

future development, when the producer of goods or services is supported by tax receipts, charitable gifts, governmental grants, or subsidies. A final incentive to the animal management community's direct participation in negotiations is the greater potential control of an accord's "regulatory environment." Conversely, an animal enterprise disengaged from such a process may fall prey to undesirable regulation resulting from public pressure for governmental intervention in animal treatment.

## VII. BARGAINING TEAMS, ATTITUDES AND PROCESSES

Subjects of collective bargaining in the animal treatment dialog productively segment along the following rough delineations of animal enterprise "clusters:"

- A. purveyors of animal featured "amusements," including owners and promoters of circuses, rodeos, bullfights, traveling exhibitions of animals, and animal racing;
- B. collectors who manipulate animals for education, preservation, and display, such as zoos, sanctuaries, marine parks/experiences, and wildlife refuges;
- C. actors in experimental environments in which the deliberate compromising of animal health or safety under controlled conditions occurs;
- D. growers of animals (including meat and fur farmers) and producers of animal byproducts introduced into the food chain;
- E. breeders (stud) and retailers of food animals and companion animals;
- F. sellers of captured wildlife under legal authority; and
- G. hunters, fishermen and trappers.

Within each one of the foregoing animal management clusters, the choice of stakeholder-participants directly affects the success of the bargaining encounter if the goal is to reach an accord of broadest application. Diversifying views is vital to prioritizing goals and vesting each camp's leadership with experience and expertise. An essential quality of a majority of the negotiation team members is an attitude that he or she will improve the position of its camp on certain issues incrementally over a protracted period. Another valuable trait of a team member is a sense of urgency. Bargaining favors including the driven, impatient stakeholder, who wants to reach animal welfare accords in due course; wholesale exclusion of militant persons, therefore, is unwise, so long as their energy is results-directed.

Stakeholders must decide upon the scope of animal management group engagement. In other words, the stakeholders must determine what will inform the choice of each cluster's collective bargaining "unit." Will negotiation and agreement making occur on a "related enterprise" basis (as suggested by clusters "A." through "G." described above) or geographically? From the standpoint of animal rights activists, broad collective agreements that cross artificial animal management "sector" lines may be advantageous. The wider the agreement's coverage, the less likely it becomes that animal management negotiators can "play off" representatives within animal rights clusters having diverging agendas from one another.

Mutual recognition of the opposing camp's continuing right to exist is paramount to achieving success in the ongoing dialog. The Collective Bargaining Forum, a now 20-years defunct organization of national union and corporate presidents, concluded that certain mutual goals must be pervasive for labor and management to have the best chance of success at the bargaining table. On one hand, owner-negotiators had to acknowledge the validity of, and the need for continuing integrity of, the labor faction. On the other hand, the labor-negotiators had to acknowledge an enterprise's need for competitiveness and achieving a fair return on owner investment.<sup>70</sup> An attitude that the other side must "cease business" will undermine progress toward an accord.

Trust-building among stakeholders can occur, and will occur, when bargaining is conducted appropriately. Proof of successful, long-term impacts of earnest participation in reasoned discussions is suggested by the pivotal role of the Federation of Hunters' Associations of the European Union (hereinafter, "FACE") in European community animal treatment policy deliberations. FACE is the "discussion partner" representing Europe's sport hunters and is consulted routinely during the fleshing out and monitoring of the EU's wildlife legislation.<sup>71</sup> In some animal activist circles, this stakeholder would be dismissed as lacking a mission other than one using animals for human entertainment and consumption, but FACE is respected by thoughtful EU animal welfare stakeholders.

Achieving incremental successes in collective bargaining will distinguish reconcilable foes, which will engage in productive capacities, from irreconcilables. These latter factions will be influenced to behave

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<sup>70</sup> See BARRY BLUESTONE & IRVING BLUESTONE, *NEGOTIATING THE FUTURE: A LABOR PERSPECTIVE ON AMERICAN BUSINESS* 29 (1994).

<sup>71</sup> Convention on Biological Diversity, website describing FACE (Federation des Associations de Chasseurs de L'UE) and its achievements, <http://bch-cbd.naturalsciences.be/belgium/services/face.htm> (last visited March 17, 2010).

with greater civility and in a spirit of accommodation<sup>72</sup> or, in extreme circumstances, will be subdued by a justice process that involves prosecution and sanctions.<sup>73</sup> Some advocate separating such irreconcilable elements of a movement from more mainstream elements that are willing to reconcile.<sup>74</sup> Once mainstream negotiators feel personally respected and their interests genuinely addressed, reconcilable foes in each camp will feel free to distance themselves from extremists threatening current negotiations and previously reached animal welfare accords.<sup>75</sup> This phenomenon makes the moderate animal rights stakeholders appear more congenial. Further, a congenial perception improves stakeholders' odds of success in attaining their bargaining agendas because animal managers perceive supporting moderates as a useful tactic in neutralizing more extreme elements among animal rightists, thereby strengthening the moderates' bargaining positions.

Another decision point for stakeholders is the choice and candidate qualifications of neutrals participating in impasse resolution. The Federal Mediation and Conciliation Service might train a panel of neutrals with the needed background to understand the scientific and ethical issues of animal treatment impacting the bargaining process, as well as the economic constraints and incentives informing the judgments of officials of various animal enterprises. A logical group to contribute neutrals is the World Organisation for Animal Health (hereinafter, the "OIE"), a non-governmental organization analyzing good animal treatment practices.<sup>76</sup> Presumably, a number of those tasked to unblock gridlocked negotiations ultimately will come initially from the public health, ethicist, behavioral science, and veterinary professions.

A further determination to be reached is the orderly process for optimal collective bargaining engagement, beginning with stakeholder identification and representation and ending with documenting agreements between the camps to hold parties to their respective commitments. A comprehensive outline of a suitable process "schematic" has been described in the generic context of environmental dispute resolution.<sup>77</sup>

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<sup>72</sup> Cf. DAVID KILCULLEN, *THE ACCIDENTAL GUERRILLA: FIGHTING SMALL WARS IN THE MIDST OF A BIG ONE* 169–170 (2009) (discussing the concept of "accidental guerillas," who are driven to common cause with violent extremists by the perceived need to defend a common or related cause against intruding, dominating forces).

<sup>73</sup> See David Metcalfe, *The Protest Game: Animal Rights Protests and the Life Sciences Industry*, 24 *NEGOTIATION J.* 125, 139 (2008) (applying game theory to a British case study, Metcalfe notes animal managers' failure "to engage with moderate animal welfare groups" eschewing illegal conduct; "further, the conflict situation would have benefited by entering a "structured dialogue" with moderate protest groups).

<sup>74</sup> See KILCULLEN, *supra* note 72, at 170.

<sup>75</sup> Munro, *supra* note 14, at 81 (describing this phenomenon as the "radical flank affect").

<sup>76</sup> See *infra* note 86.

<sup>77</sup> Susskind & Weinstein, *supra* note 50, at 337–46 (describing nine sequential process steps; the authors acknowledge that in most disputes, these steps may be "juggled.")

## VII. ADOPTING RATIONAL INITIAL STANDARDS AND BENCHMARKS FOR ANIMAL WELFARE

The resolution of animal treatment disputes can be impaired by disagreements over the facts marshaled by opposing camps to describe “baseline” conditions and the likely impacts of altering them. A number of thoughtfully-developed standards exist in English-speaking nations that are worthy of consideration for implementation (or implementation in combination with others) as “baseline” standards informing a particular animal welfare accord. A complete catalog of these alternative standards exceeds the scope of this essay. Instead, policies (contained in documents referenced herein) of animal management trade associations, governments, intergovernmental agencies, and combination public-private entities are suggested for consideration as “bargaining baseline protocols” by animal welfare stakeholders.

### *A. Standards are Available for Animal-Featured “Amusements”*

Various standards are applicable to purveyors of animal-featured “amusements,” including owners and promoters of circuses, rodeos, bullfights, traveling animal shows, and animal racing.<sup>78</sup>

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<sup>78</sup> While this arguably constitutes a broadly similar group of business endeavors (public display and maneuvering of animals for profit), the variety of species and ventures involved seemingly defies adopting a single source for standards of animal treatment. *But see* WICHITA, KAN., CODE OF ORDINANCES § 3.09.120 (2006). Adopted in November, 2006, it governs animal treatment in rodeos, petting zoos and “animal exhibitions.” Among other matters addressed, the ordinance requires that animals “must not be used in any form of live entertainment where the animal is likely to be caused undue distress or result in injury or death;” that such “animals or livestock used, ridden, shown or exhibited by a licensee shall be treated humanely.” Finally, it must be shown that “any animal injured in any rodeo, show or exhibition shall be given immediate care by a qualified, licensed veterinarian. Licensees and exhibitors shall have a written protocol for first aid and medical attention in the event of an injury.” WICHITA, KAN., CODE OF ORDINANCES § 3.09.120 (4), (8), (10) (2006). While the ordinance lacks adequate definitions to guaranty animal welfare in these enterprises, the city’s standards rival those of several American states for intended protections of animals.

Other existing standards for rodeos, circuses and cinematic treatments have been adopted in Australia by state and territorial governments and trade associations. Since federal protection of Australian animals is not pervasive, state and territorial governments have adopted standards and provide sanctions for enforcement. *See, e.g.,* DIRECTOR GENERAL, NSW DEPARTMENT OF PRIMARY INDUSTRIES, STANDARDS FOR EXHIBITING CIRCUS ANIMALS IN NEW SOUTH WALES (2009), [http://www.dpi.nsw.gov.au/\\_data/assets/pdf\\_file/0004/121549/circus-animal-standards.pdf](http://www.dpi.nsw.gov.au/_data/assets/pdf_file/0004/121549/circus-animal-standards.pdf). In addition, the work of the Primary Industries Ministerial Council of Australia is noteworthy; this body consists of the state and territorial government ministers, together with the New Zealand ministers responsible for agriculture, food, fisheries and aquaculture production. The Council has a single standing committee, the Primary Industries Standby Committee, whose members come from the same ministries (PISC). Primary Industries Ministerial Council, About the PI Ministerial Council, [http://www.mincos.gov.au/about\\_pimc](http://www.mincos.gov.au/about_pimc) (last visited Apr. 9, 2010). The standing committee commissions a series of codes of practice and standards to meet the objective “to develop sustainable, innovative and profitable”

### *B. Managers Who Retain Animals for Education, Preservation, and Display*

There is a great volume of literature, much of it scientific, pertaining to managers who retain animals for education, preservation, and display, such as zoos, sanctuaries, marine parks/experiences, and wildlife refuges.<sup>79</sup> Currently, experts from zoos and wildlife conservation fields hold widely divergent opinions about exhibition and management standards for elephants. One set of discussion-worthy standards is the BIAZA Animal Transaction Policy, maintained by the British and Irish Association of Zoos and Aquariums.<sup>80</sup> Another is the European Community Directive on the Keeping of Wild Animals in Zoos, effective April, 2002, which sets conservation, education, and animal welfare policies for all zoos and aquariums in EU member countries.<sup>81</sup> A third governance document for consideration in bargaining is the British Zoo Licensing Act.<sup>82</sup>

### *C. Managers in Testing and Laboratory Environments*

Animal managers operating in testing or other laboratory environments, in which deliberate compromising of animal health or safety

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animal-based industries. Csiro Publishing, Primary Industries Report Series, <http://www.publish.csiro.au/nid/22/sid/11.htm> (last visited Apr. 9, 2010).

For model practice codes for animal managers are found in ANIMAL WELFARE ADVISORY COUNCIL, N.S.W. CODE OF PRACTICE FOR THE WELFARE OF ANIMALS USED IN RODEO EVENTS (2005), [www.dpi.nsw.gov.au/agriculture/livestock/animal-welfare/codes/general/rodeo-code](http://www.dpi.nsw.gov.au/agriculture/livestock/animal-welfare/codes/general/rodeo-code), and ANIMAL WELFARE ADVISORY COUNCIL, N.S.W. CODE OF PRACTICE FOR ANIMALS IN FILMS AND THEATRICAL PERFORMANCES (2004). Standards of humane husbandry for all camel animal managers are contained in PRIMARY INDUSTRIES STANDING COMM., MODEL CODE OF PRACTICE FOR THE WELFARE OF ANIMALS: THE CAMEL (2006), which describes the behavioral, anatomical and physiological needs of camels (used as racing animals in certain parts of the world and in circuses and animal shows in others) and their basic welfare requirements, such as affording: water, food and air to maintain good health; social contact with other camels, with sufficient individual clean, dry space to stand, walk freely, lie down, escape aggressors, stretch and groom; protection from predation, disease, adverse effects of climate extremes or unseasonable changes in weather conditions, and unnecessary, unreasonable or unjustifiable pain, suffering and injury; and provision of a supply of common salt, and reasonable precautions against the effects of natural disaster. These standards seem adaptable to treating all orders of terrestrial mammals. The Model Codes of Practice, the Council that endorses them and the rare monitoring of them (or, for that matter, enforcement of most of these types of regulations in Australia) are criticized in detail by David Glasgow, *supra* note 40, at 195–198.

<sup>79</sup> Like the preceding cluster of stakeholders, challenges arise when aligning these variant animal treatment environments. Visitors may encounter animals in captive, semi-captive (e.g., wildlife parks or sanctuaries), or native habitats like eco-tourism settings. Two academics advocate for fully integrating the features of entertainment, education, and animal welfare in the categories of hospitality and tourism. See Amir Shani & Abraham Pizam, *Towards an Ethical Framework for Animal-Based Attractions*, 20 INT'L J. CONTEMP. HOSPITALITY MGMT. 679, 686–90 (2008).

<sup>80</sup> THE BRITISH AND IRISH ASS'N OF ZOOS AND AQUARIUMS, ANIMAL TRANSACTION POLICY (2005).

<sup>81</sup> Council Directive 1999/22, 1999 O.J. (L 94) 24 (EC).

<sup>82</sup> The Zoo Licensing Act, 1981, c. 37 (U.K.).

occurs under controlled conditions, can be subject to the following regulations: (a) in the United States, to the Animal Welfare Act, as amended by both the Improved Standards for Laboratory Animals Act (1985)<sup>83</sup> and the Health Research Extension Act of 1985;<sup>84</sup> and (b) in much of Europe, by the European Communities (Amendment of Cruelty to Animals Act 1876) Regulations 2002 and 2005 and the European Convention for the Protection of Vertebrate Animals Used for Experimental Purposes (1985), as thereafter amended.<sup>85</sup> Additionally, eight “guiding principles” were added in 2005 to the Animal Health Code, adopted and maintained by the OIE, that address experimental animals’ welfare.<sup>86</sup>

#### *D. Animals Raised for Human Consumption*

Growers of animals (including meat and fur farmers) and producers of animal byproducts introduced into the food chain may negotiate to adopt welfare protocol based upon the standards contained in any of the European Communities (Welfare of Farmed Animals) Regulations of 2008,<sup>87</sup> the Protection of Animals Kept for Farming Purposes Act of 1984,<sup>88</sup> or the European Community Protection of Animals at Time of Slaughter Regulations of 1993.<sup>89</sup> In the United States, the Humane Treatment of Domestic Livestock Regulation of the New Jersey Department of Agriculture was temporarily relevant.<sup>90</sup> In Australia, the Model Codes of Practice for the Welfare of Animals of the Primary Industries Standing

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<sup>83</sup> Animal Welfare Act, 7 U.S.C. §§ 2131–2159 (West, Westlaw through Feb. 1, 2010). For a discussion of other possibilities, see, e.g., D. Blache, G.B. Martin & S.K. Maloney, *Towards Ethically Improved Animal Experimentation in the Study of Animal Reproduction*. 43 (Suppl. 2) REPROD. DOMESTIC IN ANIMALS 8 (2008).

<sup>84</sup> 42 U.S.C. § 201 (West, Westlaw through Feb. 1, 2010). There also are trade association standards for agricultural animals in the United States. See FED’N OF ANIMAL SCI. SOCIETIES, GUIDE FOR THE CARE AND USE OF AGRICULTURAL ANIMALS IN AGRICULTURAL RESEARCH AND TEACHING (3rd ed. 2010), available at [http://www.fass.org/docs/agguide3rd/Ag\\_Guide\\_3rd\\_ed.pdf](http://www.fass.org/docs/agguide3rd/Ag_Guide_3rd_ed.pdf).

<sup>85</sup> European Convention for the Protection of Vertebrate Animals Used for Experimental and Other Scientific Purposes, May 31, 1985, [conventions.coe.int/treaty/en/html/123.htm](http://conventions.coe.int/treaty/en/html/123.htm).

<sup>86</sup> See Sarah Kahn, *The Role of the World Organisation for Animal Health (OIE) in the Development of International Standards for Laboratory Animal Welfare*, in PROCEEDINGS OF THE 6TH WORLD CONG. ON ALTERNATIVES & ANIMAL USE IN THE LIFE SCIENCES 727 (2008), available at <http://altweb.jhsph.edu/wc6/paper727.pdf>. The OIE is the official standards-setting organization for animal health and zoonoses under the World Trade Organization; 173 member countries and territories are dues-paying subscribers. As a non-governmental organization and trusted source of expert opinion, the OIE has scientific advisors who might serve capably as informed neutrals in animal labor accord negotiations. *Id.*

<sup>87</sup> European Communities (Welfare of Farmed Animals) Regulations 2008, amended by European Communities (Welfare of Farmed Animals) (Amendment) Regulations 2009.

<sup>88</sup> Protection of Animals Kept for Farming Purposes Act, (No. 13/1984) (Ir.), available at <http://www.irishstatutebook.ie/1984/en/act/pub/0013/print.html>.

<sup>89</sup> Council Directive 93/119, 1993 O.J. (L 340) 21 (EC).

<sup>90</sup> N.J. ADMIN. CODE §§ 2:8-1.1–2:8-4.4 (2008).



Committee encompasses animal management of cows, pigs, and chickens, albeit these standards of care are allegedly only sporadically monitored by Australian state and territorial governments.<sup>91</sup>

### *E. Companion Animals*

Breeders (stud) and retailers of companion animals may refer to the animal welfare Codes of Practices in New South Wales. For example, consider the manuals on "Breeding Dogs" (No. 6); "Breeding Cats" (No. 7); "Keeping and Trading of Birds" (No. 4) and "Animals in Pet Shops" (2008).<sup>92</sup> In the United States and elsewhere in the English-speaking world, welfare guidelines have been adopted by commercial dog breeders selling to the public; breeders, in turn, are regulated by state legislation and by the national organizations of various purebred dog species.<sup>93</sup> The current movement across America to regulate commercial dog breeders who sell to consumers is evidenced by recent processing of bills through state legislatures in Illinois (H.B. 198 and S.B. 53, 2009 session), Oregon (H.B. 2470, 2009 session), Texas (H.B. 3180, 2009 session), and Washington (S.B. 5651, 2009 session).<sup>94</sup>

### *F. Captured Wildlife*

With respect to sellers of captured wildlife under legal authority, the United States has promulgated rules and regulations under the

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<sup>91</sup> See, e.g., PRIMARY INDUSTRIES STANDING COMMITTEE, MODEL CODE OF PRACTICE FOR THE WELFARE OF ANIMALS: PIGS (3rd ed. 2008), available at <http://www.publish.csiro.au/Books/download.cfm?ID=5698> (last visited Apr. 22, 2010). Self-governance standards for feedlot operators exist in Australia in PRIMARY INDUSTRIES STANDING COMMITTEE, NATIONAL GUIDELINES FOR BEEF CATTLE FEEDLOTS IN AUSTRALIA (2nd ed. 1997). David Glasgow *supra* note 40, at 196 asserts that only the State of South Australia effectively enforces any of the Codes' standards. Glasgow, *supra* note 40, at 196.

<sup>92</sup> These Codes of Practice fall under Prevention of Cruelty to Animals (General) Regulation 2006, N.S.W.R. Reg. & B. 2006-523 (2006), available at <http://www.legislation.nsw.gov.au/maintop/scanact/inforce/NONE/0> (Click P under "Browse In Force" "Regulations"; then click "Prevention of Cruelty to Animals (General) Regulation 2006"; then click "Whole title").

<sup>93</sup> To review the myriad codes of ethics for species of dogs, pertinent Internet sites include, [www.akc.org](http://www.akc.org), for American Kennel Club recognized breeds; [www.ukcdogs.com](http://www.ukcdogs.com), for United Kingdom Kennel Club recognized breeds; and [www.ckc.ca](http://www.ckc.ca), for Canadian Kennel Club recognized breeds.

<sup>94</sup> Washington's bill, for example, requires breeders to house their dogs in conditions that are sanitary and dry, and to be provided with food, water, and exercise. S.B. 5651, 61st Leg., Reg. Sess. (Wash. 2009).

Endangered Species Act.<sup>95</sup> In Europe, Annex III of the Birds Directive of 1979<sup>96</sup> and the Habitats Directive of the European Union of 1992<sup>97</sup> are pertinent to treatment standards discussions.

### *G. Hunters, Fishermen, and Trappers*

Hunters, fishermen, trappers, and similar industry's animal managers can debate with animal rights groups to reach benchmarks inherent in the Birds Directive of 1979, the European Union's first legislation pertaining to nature, together with its accompanying "Guidance document on hunting under Council Directive 79/409/EEC."<sup>98</sup> Other useful sources include the European Charter on Hunting and Biodiversity of 2007<sup>99</sup> and the International Council for Game and Wildlife Conservation's publication on sustainable hunting.<sup>100</sup>

## IX. CONCLUSION

The controversy pitting animal rights activists against animal managers can be summarized in two sentences. Animal rights proponents believe that nature, left to its devices without human intervention, will

<sup>95</sup> Endangered Species Act, 16 U.S.C. §§ 1531–1544 (West, Westlaw through Feb. 1, 2010); 50 C.F.R. §§ 10–14, 50 C.F.R. §§ 217–227 (West, Westlaw through Feb. 5, 2010) (implementing rules and regulations under the Endangered Species Act of 1973). This statute provides a program under the U.S. Fish and Wildlife Service, Department of Interior, for conserving threatened and endangered species. 16 U.S.C. §§ 1531–1544 (West, Westlaw through Feb. 1, 2010). The department requires import/export permits, maintenance of records, and submission of reports on the care and handling of endangered, threatened, and conserved species. 50 C.F.R. §§ 10–14, 50 C.F.R. §§ 217–227 (West, Westlaw through Feb. 5, 2010). The Marine Mammal Protection Act, 16 U.S.C. §§ 1361–89 (West, Westlaw through Feb. 1, 2010), created a program under the Departments of Commerce (National Marine Fisheries Service) and Interior (U.S. Fish and Wildlife Service) for the protection of marine mammals and marine mammal products. Its regulations require acquiring permits, maintaining of records, submitting reports, and permitting inspections covering the care and handling of marine mammals. 50 C.F.R. Parts 10–14, 216–227 (West, Westlaw through Feb. 5, 2010).

<sup>96</sup> See *infra* note 98.

<sup>97</sup> Council Directive 92/43, 1992 O.J. (L 106) 7 (EC); see E.D. McCoy & K. Berry, *Using an Ecological Ethics Framework to Make Decisions About the Relocation of Wildlife*, 14 SCI. ENG. ETHICS 505–21 (2008) (for additional international treatment of trading in wildlife).

<sup>98</sup> Council Directive 79/409, 1979 O.J. (L 103) 1 (EC).

<sup>99</sup> STANDING COMMITTEE, CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE AND NATURAL HABITATS, EUROPEAN CHARTER ON HUNTING AND BIODIVERSITY (2007), available at [http://www.cic-wildlife.org/uploads/media/Hunting\\_Charter\\_EN.pdf](http://www.cic-wildlife.org/uploads/media/Hunting_Charter_EN.pdf).

<sup>100</sup> INT'L COUNCIL FOR GAME AND WILDLIFE CONSERVATION ET AL., BEST PRACTICES IN SUSTAINABLE HUNTING: A GUIDE TO BEST PRACTICES FROM AROUND THE WORLD (2008), available at [http://www.cic-wildlife.org/uploads/media/Best\\_Practice\\_Book\\_EN\\_final.pdf](http://www.cic-wildlife.org/uploads/media/Best_Practice_Book_EN_final.pdf). Additional attempts at deriving ethical hunting standards in North America have yielded publications like SAFARI CLUB INTERNATIONAL, ETHICS PROCESS (2007), and in Australia, in the trapping realm, see, e.g., STANDING COMM. OF AGRIC., ANIMAL HEALTH COMM., FERAL LIVESTOCK ANIMALS: DESTRUCTION OR CAPTURE, HANDLING AND MARKETING (1996).

achieve equilibrium among animal species in due course, so that ethical values, not human science, inform and control the debate. Animal managers believe that following a millennia of animal domestication, meat consumption, and species management, no such salutary, "natural" course of events is probable. The inescapable reality is that our animal welfare conundrum consists of roughly equal parts of scientific controversy and value debate.<sup>101</sup> While the chasm of disagreement is vast, not every dispute defies bridging. The camps can, and should, identify issues for which reasonable, shorter-term accommodation is achievable.<sup>102</sup> Camps can then take measurable steps towards that accommodation, using best practices found among the many existing animal treatment protocols and regulations identified in the preceding section. When one camp believes itself to be the lone, legitimate advocate for the "public" interest, entitling it to cast the animal treatment debate as a contest of "right" versus "wrong," the probability for accommodation is remote indeed. In an ideal environment, each camp will acknowledge the legitimate interests of the other; there, collective bargaining will lead to adopting a tolerable series of animal welfare accords.<sup>103</sup>

The conflict between the rights of individuals and of a nation's *Homo sapiens* species led to the adoption of a Bill of Rights,<sup>104</sup> anchoring an ordered American society. The conversation about the contours of individual rights, within the framework of a republic desiring to do well by the greatest number of that species, has continued more than 210 years. Americans should appreciate from this experience that ongoing, sensible conversations about animal welfare can hold in tension, and gradually, tolerably accommodate radically opposing points of view addressing the welfare of species other than humans. If the factions will initially agree on just two matters—that improvements in animal treatment make for a

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<sup>101</sup> See Susskind & Weinstein, *supra* note 50, at 324. Differences in values will endure; but while technological and economic changes will give rise to new controversies, establishing a bargaining milieu that enables stakeholders to begin to seek scientifically appropriate solutions to animal welfare controversies in turn may engender dialog that gradually addresses issues of equity. See Cormick & Knaster, *supra* note 47, at 30.

<sup>102</sup> The fundamental advantage of accommodation is that it is more cost-effective than vilifying, type-casting and stigmatizing one's adversaries. The experience of Henry Spira bears out this argument. Spira's intention was avoiding disintegrative or dysfunctional shaming, together with the polarizing attitude that "either you're with us or you're against us," by endeavoring to identify common ground between animal rights advocates and animal managers. See Lyle Munro, *The Animal Activism of Henry Spira (1927-1998)*, 10 SOC'Y & ANIMALS 173, 175-76 (2002). Spira was not above threatening coercion, but did so as a last resort in the exercise of re-integrative shaming. *Id.* at 189. Spira's successes in causing incremental change in animal welfare, much of the time on an individual enterprise basis and his lack of overhead expense in accomplishing his agenda, are admirable stuff to objective audiences.

<sup>103</sup> Cf. Susskind & Weinstein, *supra* note 50, at 335.

<sup>104</sup> U.S. CONST. amend. I-X.

morally-improved society, and that face-to-face resolution of conflict is preferable to urban guerilla warfare tactics—then common ground is reachable on some animal welfare issues. The economically and temporally most advantageous, and potentially farthest-reaching, means to adopt animal welfare protocols is through collective bargaining.

## APPENDIX

“Animal rights” - a broad movement to improve animal welfare worldwide; proponents will collectively be called “animal rights activists,” unless another term is used; for example, “antivivisectionists” may be used to identify opponents of all animal use as experimental subjects.

“Animal liberators” or “animal liberationists” - the most extreme faction in their views across the spectrum of animal rights activists; fundamentally, they believe that the only antidote to Speciesism is to release each animal from control of its animal manager, who is deemed a “captor” or “oppressor.”<sup>105</sup>

“Animal managers” - those engaged in using animals for human advantage, which would include private and public sector enterprises such as governments, academic institutions, and for-profit business endeavors. In some realms, the organizations are referred to as “animal enterprises,” but the term as used in this Article deals with the individuals, in addition to the organizations.

“Animal management” - the practices through which animal managers control some material portion (if not every aspect) of an animal’s daily living conditions.

“Animal treatment” - the conditions of manipulation and control of individual animals by animal managers.

“Animal welfare” - an optimized state of minimal animal management by humans, short of the (a) establishment of universal veganism, or (b) release of every animal subject to animal management. If veganism becomes universal and no animals are subject to animal management, animal welfare ceases to be at issue. In the meantime, there are divergent perspectives on what constitutes animal welfare.<sup>106</sup>

“Collective bargaining” - an interrelated group of interactions between workers and those exploiting their labor who are attempting to reach an accord.<sup>107</sup>

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<sup>105</sup> For a respectable summary of the contrast in approaches taken by “traditional” animal activists versus animal liberators, see 1 SAMUEL J. BEST & BENJAMIN RADCLIFF, *POLLING AMERICA: AN ENCYCLOPEDIA OF PUBLIC OPINION* 19–23 (2005).

<sup>106</sup> For a variety of working scientific (as opposed to ethical) definitions of the term, see Isabelle Veisser and Bjorn Forkman, *The Nature of Animal Welfare Science*, 10 *ARBS ANNU. REV. BIOMED. SCI.* T15–T26 (2008), available at <http://arbs.biblioteca.unesp.br>.

<sup>107</sup> See JOHN T. DUNLOP, *DISPUTE RESOLUTION* 95 (1984).